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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,374	04/15/2004	Yuichiro Uchida	072955-0103	6627
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FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER LEFF, STEVEN N	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/824,374	UCHIDA, YUICHIRO	
	Examiner	Art Unit	
	Steven Leff.	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- Claims 1, 4, and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishino et al. in view of Clemente et al. (2337741). Applicant has incorporated the previous limitations of claim 3, into claim 1, thus necessitating the new rejection.

With respect to claims 1, 4, 7-11, Ishino et al. teach a method of packaging and thawing a sushi product. With respect to claims 1, 2, and 8-11 specifically, Ishino et al. teach rolling a sushi body (col. 8 line 50+) consisting of a treated sushi material and vinegared rice (col. 8 line 36+) in a cooked edible kelp (col. 7 line 16+) where the entire surface of the kelp rolled sushi is wrapped with a shape keeping film (col. 8 line 53+), where the shape keeping film is larger than the total exterior surface of the sushi body (fig. 1-3). In addition, the film wrapped sushi is seal-packaged (col. 8 line 56+) and frozen (col. 8 line 59+) and thawed (col. 9 line 31+) thus allowing the sushi to be circulated at ordinary temperatures (col. 4 line 61+). Ishino et al. further teach that the kelp and shape keeping film wrapped sushi is then inserted into a bag made of an inner polyethylene film and an outer nylon film prior to seal-packaging (col. 8 line 57+). It is noted that the term "seal-packaging" is interpreted with respect to claim 1 to mean when the bag or package is actually sealed from the surrounding environment.

With respect to claim 4, Ishino et al. teach that the rice and sushi material are pressed from above and compressed prior to being wrapped by the shape-keeping film, (col. 8 line 45+) and further figures 1-3 show at reference number 6 that the film is completely in contact with the sushi body. In the instant case the Office interprets that since the film of Ishino et al. is in contact with the sushi body and since the sushi product was compressed it would be inherent that "the rolled and tightened strength of the shape-keeping film is adjusted so that when eating sushi, vinegared rice has a unitary feeling of hardness or elasticity together with the kelp and sushi material."

Ishino et al. further teach with regards to claim 7, that the "edible kelp rolled sushi has a shape for plural sushi pieces," in the instance that the "shape for plural sushi pieces" (col. 4 line 15+) is meant to represent multiple packaged pieces, and Ishino et al. further teach sushi which is a shape capable of being cut into "plural sushi pieces."

However Ishino et al is silent with respect to drawing in, contact-bonding and winding said shape-keeping film together with the edible kelp around the circumferential surface of the sushi body, and laminating the both ends of the rolled and tightened peripheral film to cover the periphery of the sushi body and to form a edible kelp rolled sushi, in addition to drawing in the remaining ends of the shape-keeping film at the both sides in the axial direction onto the surface of the edible kelp rolled sushi and contact-bonding the ends to said shape-keeping film on the exterior surface.

With respect to claim 3, Clemente et al. teach a method of packaging, and the wrappers thereof in connection with such articles as cigars, food products, and the like having moisture content in the fresh state (abstract). More specifically, Clemente et al. teach drawing in, contact-bonding and winding said shape-keeping film together with the edible kelp around the circumferential surface of the sushi body, and laminating the both ends of the rolled and tightened peripheral film to cover the periphery of the sushi body and to form a edible kelp rolled sushi (pg. 2 col. 1 line 52+), in addition to drawing in the remaining ends of the shape-keeping film at the both sides in the axial direction onto the surface of the edible kelp rolled sushi and contact-bonding the ends to said shape-keeping film on the exterior (pg. 2 col. 1 line 61+).

Therefore, although Ishino et al. does not teach the specific method of wrapping the sushi, Ishino et al. does teach wrapping a sushi product with a shape keeping film in order to maintain the freshness of the food product (abstract), where Clemente et al. do teach a method of wrapping food products where Clemente et al. does positively teach drawing in, contact-

bonding and winding said shape-keeping film together with the edible kelp around the circumferential surface of the sushi body, and laminating the both ends of the rolled and tightened peripheral film to cover the periphery of the sushi body and to form a edible kelp rolled sushi (pg. 2 col. 1 line 52+), in addition to drawing in the remaining ends of the shape-keeping film at the both sides in the axial direction onto the surface of the edible kelp rolled sushi and contact-bonding the ends to said shape-keeping film on the exterior (pg. 2 col. 1 line 61+).

Consequently, since both Ishino et al., and Clemente et al. teach wrapping a food product in a shape keeping film for its art recognized and applicants intended function of maintaining a food product in a particular state, one of ordinary skill in the art would have been motivated to combine the teachings of Ishino et al., and Clemente et al. in order to produce a wrapped sushi product which maintains desirable characteristics, such as freshness and which further ensures that the sushi product is maintained in a compact state during storage since the ends of the film are positively sealed thus ensuring that the film does not unwind from the sushi product. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have produced a wrapped food product, where the wrapper is positively sealed with respect to the enclosed product.

- Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishino et al. in view of Clemente et al. (2337741) in view of Fujishima (JP-55104867).

Ishino et al. and Clemente et al. are taken as above however both are silent with respect to oxygen-removing agent being included within the seal package.

With respect to claim 5, Fujishima teaches a method of wrapping sushi. Specifically with respect to claim 5, Fujishima teaches an oxygen-removing agent being included within the seal package. (abstract) Therefore, although neither Ishino et al. nor Clemente et al. teach an oxygen-removing agent within the seal-package, Ishino et al. does teach degassing and thermally sealing the sushi product within the pouch. (col. 8 line 57+) Further, both Ishino et al. and Fujishima teach maintaining a specific atmosphere within the sealed pouch for its art recognized and applicants intended function of removing gas(es), which promote spoilage of the sushi product. Fujishima continues by specifically stating "that the interior of the package is kept under an oxygen-free state by substituting with inert gas or by enclosing a deoxidizing agent in the package," (abstract) and therefore, one of ordinary skill in the art would have been motivated to

combine the teachings of Ishino et al. and Fujishima and produce a sushi package which included an oxygen-removing agent within thus maintaining the freshness and palatability of the sushi within the package and increasing the products shelf life, and would have been obvious to one of ordinary skill in the art at the time of the invention by applicant to have substituted the degassing method of Ishino et al. with an oxygen-removing agent within the package due to the fact that Fujishima positively teaches their substitution.

- Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ishino et al. in view of Clemente et al. (2337741) in further view of Yamashita (JP-2001008647).

Ishino et al. and Clemente et al. are taken as above however both are silent with respect wrapping the sushi with a bamboo sheath prior to packaging

Regarding claim 6, Yamashita teaches a method of containing and wrapping a sushi product. More specifically Yamashita teaches preparing sushi by putting boiled crab on cooked rice within a vessel. After obtaining the sushi product Yamashita teaches removing the sushi from the vessel, cutting the sushi into plural pieces, and subsequently returning the pieces to the container and then wrapping the container with a bamboo sheath. Therefore, although neither Ishino et al. nor Clemente et al. teach wrapping the sushi with a bamboo sheath prior to packaging, Ishino et al. does teach wrapping the sushi product with more than just the single layer of shape keeping film. Further the bamboo sheath as recited in claim 6 does not perform a function which is necessary in order to maintain the freshness of the sushi product. Therefore one of ordinary skill in the art would have been motivated to combine the teachings of Ishino et al. Clemente et al. and Yamashita and wrapped the sushi product with a natural or synthetic bamboo sheath in order to provide a more appealing wrapped product to the consumer and further to allow the package to visually represent that its contents are sushi due to the fact that bamboo sheaths are common within the realm of sushi for not only packaging but also rolling the sushi. In the instant after the wrapping of the sushi product with the shape keeping film, any of the subsequent layers of Ishino et al., regardless of the material which it is made of, may visually depict a bamboo sheath and thus the simple package would be a synthetic bamboo sheath. Further, since Yamashita teaches wrapping the container with the bamboo sheath one of ordinary skill in the art would have been motivated to simply place the sushi product covered by a natural or synthetic bamboo sheath in a seal package, thus maintaining the freshness of the sushi product for a longer

period of time and thus increasing its shelf life and the amount of time which the sushi may be purchased and/or eaten.

Therefore with respect to claim 6 it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have wrapped the sushi product with a natural or synthetic bamboo sheath prior to seal packaging in order to provide a general representation of the packages contents without needing to read the label, and in addition it would have been obvious to place a natural or synthetic bamboo sheath within a seal package thus increasing the shelf life of the product.

- Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishino et al. in view of Clemente et al. in further view of Garwood (4840271).

Ishino et al. and Clemente et al. are taken as above however neither teach packaging a knife with the sushi product.

With respect to claims 12 and 13, Garwood teaches an improved package for containing meat, fish, or other food products. (col. 1 line 7+) More specifically Garwood teaches a method where food items are tightly packaged within a wrapping material and where substantially all of the atmospheric air is excluded. The tightly packaged food item, which is placed in a container, is subsequently treated with a gas to increase the food items shelf life and finally the entire container with the food within is sealed (col. 1 line 51+), where the packaged food item further includes a plastic knife which can divide the packaged sushi product (fig. 3)

With respect specifically to claims 12 and 13, Garwood teaches that packaged in combination with the food item is an eating implement such as a plastic knife (fig. 3) and thus although neither Ishino et al. nor Clemente et al. teach packaging a knife with the sushi product, Ishino et al. does teach packaging a food item which may be cut into smaller pieces (col. 4 line 15). Further both Ishino et al. and Garwood teach packaging foods which require that the interior of the package be treated in a manner which would increase the shelf life of the product where the food item is a meat or fish. Therefore since both Ishino et al. and Garwood teach packaging food materials which may spoil over an amount of time and more specifically packaging food items which are to be consumed, one of ordinary skill in the art would have been motivated to combine the teachings of Ishino et al., Clemente et al. and Garwood in order produce a packaged food item(s) which included a knife thus ensuring at the time of consumption that the consumer has a knife readily available and thus is able to not only cut the food item but do so in a neat manner

thus making the package more convenient to the consumer. Further, the use specifically of a plastic knife would allow the consumer to merely throw away the knife after use thus avoiding the need to clean the utensil. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have produced a packaged sushi item, which included a plastic knife within the package thus increasing the overall convenience of the package.

### ***Response to Arguments***

- Applicant's arguments with respect to claims 1 and 4-13 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections, as arguments with regard to previously rejected claim 3 are not provided. Claim 3 has been merely incorporated into claim 1.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.



Application/Control Number:  
10/824,374  
Art Unit: 1794

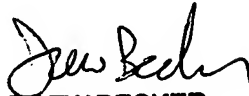
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SL

11/20/07

  
DREW BECKER  
PRIMARY EXAMINER

11-21-07